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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,700	07/09/2003	Gerard T. Howse	1430/96	1571
757	7590	06/16/2006	EXAMINER	
BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			WEIER, ANTHONY J	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/616,700

Applicant(s)

HOWSE ET AL.

Examiner

Anthony Weier

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 18-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-17 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of Group I (claims 1-17) in the reply filed on 4/3/06 is acknowledged.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4 and 6-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gaebler et al taken together with Orthoefer.

Gaebler et al discloses a method of preparing a meat analogue by combining (a) a hydrated textured vegetable protein (paragraph 38) and (b) a proteinaceous base comprising vital wheat gluten, water, and binder (paragraph 37). Gaebler et al further discloses the inclusion of seasoning to the mixture (e.g. paragraph 22; Example 1) and shaping the product in the shape of a sausage for example (paragraph 39). With respect to instant claim 7, it should be noted that Gaebler et al further discloses mixing of the various components to provide a, for example, a sausage product resembling Bratwurst. In doing so, it is inherent that the mixing will be effected to provide a consistent appearance since the internal structure of Bratwurst has a relatively consistent appearance.

The claims differ in that a milk-derived protein is employed as a binder in the protein base. Although including a binder in the protein base, Gaebler et al only discloses egg white as an example (paragraph 20). However, casein is a known substitute for egg albumin as a binder in meat analogs as taught, for example, by Orthoefer (col. 9, lines 49-63). It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed a milk derived binder as taught by Orthoefer in place of the egg albumin of Gaebler et al as a known alternative or substitute.

The claims further call for the use of wheat protein as the hydrated textured vegetable protein. Gaebler et al discloses a number of different protein sources including the use of wheat (paragraph 27). It would have been further obvious to have employed same as a matter of preference depending on, for example, cost concerns or the particular protein source that is more readily available to the manufacturer.

The claims further call for forming and adding a binder to the hydrated textured protein and protein base. Gaebler et al discloses the addition of a carbohydrate gel which acts as a binder, but same is added first to the hydrated textured protein and then as a mixture to the protein base portion. However, it is not seen where the order of mixing would make for a patentable distinction since it is expected that the order of mixing would result in different products. It would have been further obvious to have added such binder to both the hydrated textured vegetable protein and the protein base as a preformed mixture or by adding all groups together simultaneously as a matter of preference.

The claims further call for the addition of a separate binder composition (e.g. claim 4). Gaebler et al discloses the use of a gel phase containing binding ingredients (paragraph 31). Gaebler et al discloses the inclusion of cornstarch therein. It is expected that the cornstarch used therein has been modified. If not, modified cornstarch is notoriously well known, and it would have been further obvious to have provided a modified version as a matter of preference depending on the modification tweak desired in the product.

Claim 9 further calls for a vegetable fat in the binder. Although not set forth in a binder composition of its own, Gaebler et al discloses the use of vegetable oil as a binder in the protein base (e.g. paragraph 16). It would have been further obvious have employed same in a solid/fat form as a matter of preference. Also, it would have been further obvious to have incorporated same as a separate binder entity. As discussed above, it is not seen where the order of mixing the various ingredients of the instant invention would provide for a patentable distinction as it would be expected that the same product would be formed whether the binder is added as a separate composition to the protein base or hydrated textured protein component.

Claim 14 further calls for the methylcellulose and hydrogenated solid fat to be employed. It would have been obvious to have employed the vegetable oil of Gaebler et al as a hydrogenated form for its art recognized benefits. As for the use of methylcellulose, Gaebler et al does set forth the use of a composition which employs carboxymethylcellulose as a binder (see paragraph 31; U.S Patent No. 5603976, incorporated by reference therein, teaches such binder ingredient in col. 7, line 56).

The claims further call for mixing the components by blending in a blender until a consistent appearance is achieved. Although Gaebler et al discloses mixing the ingredients, it is silent regarding the use of a blender. Clearly, blenders are notoriously well known, and it would have been further obvious to have employed same for the process of mixing as an art recognized mode as a matter of preference.

The claims also call for the amounts of various ingredients of the meat analogue. However, such determinations would have been well within the purview of a skilled artisan, and, absent a showing of unexpected results, it would have been further obvious to have arrived at same as a matter of preference depending on, for example, the flavors desired from different components or the degree of food attribute desired from any one of the ingredients added.

Gaebler et al is silent regarding the particular details of hydration. Claim 16 calls for specifically soaking the textured wheat protein for about 8 to about 12 hours. However, it is not seen where soaking per se and for the time claimed would make for a patentable distinction as the same objective of increasing the moisture content of the textured wheat protein component would be achieved. It would have been further obvious to have employed soaking as an art recognized mode for increasing moisture content of a substrate and to have employed the time as claimed as a matter of preference depending on the particular degree of moisture increase desired.

***Allowable Subject Matter***

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4. Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of record neither discloses nor teaches the use of such binder composition as set forth in claim 5 in the preparation of a meat analogue also comprising a hydrated textured vegetable protein and separate protein base. Although Gaebler et al discloses the use of binders in various places within the composition, the claimed combination is not suggested or provided as a separate entity in the manner set forth in claim 5.

#### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

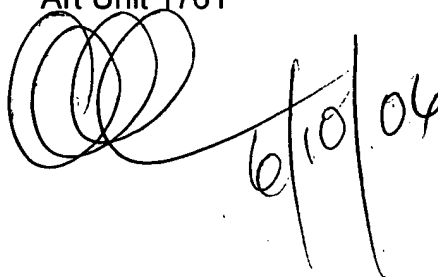
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier  
Primary Examiner  
Art Unit 1761

Anthony Weier  
June 10, 2006

A handwritten signature consisting of several overlapping loops, followed by the date "6/10/06" written in a vertical orientation.